IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Kishan Lal Vs. Om Prakash

**S.B.CR.REVISION PETITION NO.1008/2005**

DATE OF ORDER :: November 10, 2006

**PRESENT**

**HON'BLE MR.JUSTICE H.R.PANWAR**

Mr.G.J.Gupta, for the petitioner.
Mr.Niranjan Singh for the non-petitioner

**BY THE COURT:**

This criminal revision petition under section 397/401 Cr.P.C. is directed against the judgment and order dt. 16.11.2005 passed by the Additional Sessions Judge No.1, Sri Ganganagar (for short 'the appellate court' hereinafter), whereby the appeal filed by the petitioner being Cr.Appeal No.29/2005 against the judgment and order dt. 24.5.2005 passed by the Additional Chief Judicial Magistrate, Sri Ganganagar (for short 'the trial court' hereinafter), was dismissed and the conviction and sentence recorded by the trial court was affirmed.

I have heard learned counsel for the parties. Carefully gone through the judgment and order passed by the trial court as well as by the appellate court. I have also gone through the record of the trial court.

On a complaint filed by the non-petitioner under section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter), the petitioner was put to trial. The complainant non-petitioner appeared himself as PW.1 and stated that a sum of Rs.70,000/- was given on loan to the petitioner. The petitioner in return of loan, gave a cheque Ex.P/1 for the said amount. He proved the signature of the petitioner on the cheque. The cheque was presented to the banker through UCO Bank, which was returned unpaid and dishonoured on the ground of insufficient fund to the account of the petitioner. A notice, demanding cheque amount Ex.P/3 within fifteen days from the receipt of notice, was sent to the petitioner. The complainant proved the notice Ex.P/3, Postal Address Ex.P/4 and Acknowledgment Due Ex.P/5 by which the notice was received by the petitioner and stated that even after receipt of the notice, the petitioner failed to pay the cheque amount within fifteen days and, therefore, within the statutory period, the complaint was filed. As against the evidence of non-petitioner, the petitioner failed to rebut the evidence and as such the non-petitioner succeeded in establishing his case.

The trial court, on appreciation of the evidence produced on record, came to the conclusion that the complainant has established his case and the offence under section 138 of the Act has been established against the present petitioner beyond reasonable doubt and accordingly, the petitioner was convicted for the offence under section 138 of the Act and sentenced to six months' simple imprisonment and fine of Rs.78,000/-, in default of payment of fine, further to undergo one month's simple imprisonment.

The petitioner preferred an appeal against the judgment and order dt. 24.5.2004. The appellate court on scrutiny of the record of the trial court and on re-appreciation of the evidence, came to the conclusion that the finding arrived at by the trial court is based on proper and sound appreciation of the evidence. Finding no error in the judgment of conviction and order of sentence, the appellate court maintained the conviction and order of sentence. Hence, this revision petition.

On close scrutiny of the record of the trial court, statements of the witnesses and the material available on record, in my view, both the courts below concurrently found that the offence under section 138 of the Act has been established beyond reasonable doubt and the finding is based on

proper and sound appreciation of the evidence and, therefore, calls for no interference.

Learned counsel for the petitioner submits that the sentence awarded by the trial court and affirmed by the appellate court is excessive.

Having regard to the facts and circumstances of the case, in my view, the sentence of six months' imprisonment in any way cannot be said to be excessive. However, since the petitioner has been adequately sentenced by awarding six months, sentence of fine appears to be on higher side and, therefore, in order to meet the ends of justice, sentence of fine deserves to be reduced to Rs.20,000/-.

Consequently, the revision petition filed by the petitioner fails and is dismissed. Judgment and order impugned convicting the petitioner as also sentence of imprisonment is maintained. However, the sentence of fine is reduced to Rs.20,000/- and in default of payment of fine, the petitioner shall undergo seven days' simple imprisonment.

**[H.R.PANWAR],J.**

m.asif/-